

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1857

H.P. 1309

House of Representatives, May 1, 1997

An Act to Protect Patients of Managed Care Plans.

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BROOKS of Winterport.

Cosponsored by Representatives: BRAGDON of Bangor, LOVETT of Scarborough, SAXL of Portland.

Be it enacted by the People of the State of Maine as follows:

2 **Sec. 1. 24-A MRSA §4301, sub-§§2-A, 4-A and 4-B** are enacted to
4 read:

6 **2-A. Health care treatment decision.** "Health care
8 treatment decision" means a determination made when medical
10 services are provided by the managed care plan or a decision that
12 affects the quality of the diagnosis, care or treatment provided
14 to an enrollee of the managed care plan.

12 **4-A. Medically appropriate care.** "Medically appropriate
14 care" means care that meets the standard for care for health care
16 services as determined by health care providers in accordance
18 with the prevailing practices and standards of the medical
20 profession and community.

18 **4-B. Ordinary care.** "Ordinary care" means, in the case of
20 a carrier, the degree of care that a carrier of ordinary prudence
22 would use under the same or similar circumstances. For a person
24 who is an employee, agent, ostensible agent or representative of
26 a carrier, "ordinary care" means the degree of care that a person
28 of ordinary prudence in the same profession, specialty or area of
30 practice would use in the same or similar circumstances.

26 **Sec. 2. 24-A MRSA §4310** is enacted to read:

28 **§4310. Duty of care**

30 **1. Carrier duty; liability.** A carrier has the duty to
32 exercise ordinary care when making health care treatment
34 decisions and is liable for damages for harm to an enrollee
36 proximately caused by the failure of the carrier to exercise
38 ordinary care.

36 **2. Carrier liability for others.** A carrier is liable for
38 damages for harm to an enrollee proximately cause by the health
40 care treatment decisions made by its:

40 A. Employees;

42 B. Agents;

44 C. Ostensible agents; or

46 D. Representatives who are acting on behalf of the carrier
48 and over whom the carrier has the right to exercise
50 influence or control or has actually exercised influence or
control when that influence or control results in the
failure to exercise ordinary care.

2 3. Burden of proof. In an action under this section, the
burden is on the carrier to prove that a length of hospital stay
4 approved by the carrier was consistent with medically appropriate
care.

6 4. Limitation. Standards of care required by subsections 1
and 2 do not require a carrier to provide to an enrollee
8 treatment that is not covered by the managed care plan provided
by the carrier.

10 5. Law not a defense. The laws of the State prohibiting a
12 person from practicing medicine may not be asserted by a carrier
as a defense in any action.

14 6. Proof of relationship. In an action against a carrier,
16 a finding that a physician or other health care provider is an
employee, agent, ostensible agent or representative of the
18 carrier may not be based solely on proof that the person's name
appears in a listing of approved physicians or health care
20 providers made available to enrollees under a managed care plan.

22 7. Workers' compensation. This section does not apply to
workers' compensation insurance coverage.

26 SUMMARY

28 This bill establishes a duty and standard of ordinary care
that must be provided by an insurance company, health maintenance
30 organization, preferred provider organization or a nonprofit
hospital or medical service organization under a managed health
32 care plan. It also authorizes a person enrolled in a managed
health care plan to bring a legal action for damages against a
34 carrier if the person is harmed by a carrier's failure to
exercise ordinary care.